

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**VELCERA, INC. AND FIDOPHARM, INC.**

**Plaintiffs,**

**v.**

**MERIAL LIMITED,  
Defendant,**

*and*

**MERIAL LIMITED AND BASF AGRO, B.V.,  
ARNHEM (NL), WÄDENSWIL BRANCH,**

**Counterclaim-Plaintiffs,**

**v.**

**VELCERA, INC. AND FIDOPHARM, INC.,**

**Counterclaim-Defendants,**

*and*

**VELCERA, INC. AND FIDOPHARM, INC.,**

**Counterclaim-Plaintiffs,**

**v.**

**BASF AGRO, B.V., ARNHEM (NL),  
WÄDENSWIL BRANCH,**

**Counterclaim-Defendant.**

**C.A. No. 11-00134**

**JOINT STIPULATION AND ORDER REGARDING PARTIAL STAY AND LIMITED  
MANUFACTURING PROCESS DISCOVERY**

Velcera, Inc. and Fidopharm, Inc. (collectively “Plaintiffs”) and Merial Limited and BASF Agro, B.V., Arnhem (NL), Wädenswil Branch (collectively “Counterclaim-Plaintiffs”), (Plaintiffs and Counterclaim-Plaintiffs collectively the “Parties”) by and through their undersigned counsel, agree, and the Court hereby orders, as follows:

1. Except as provided below, the present action will remain stayed for up to 90 days after the October 27, 2011 status conference, *i.e.*, until January 25, 2012<sup>1</sup>;
2. No later than December 7, 2011, Plaintiffs shall provide discovery sufficient to identify all process(es) for making the fipronil that has been incorporated into any fipronil-containing products that Plaintiffs have made, had made, used, offered to sell or sold in the United States, or imported into the United States (“Limited Manufacturing Process Discovery”). Such Limited Manufacturing Process Discovery shall be limited to:
  - a. A representative sample of any such products and of the fipronil that has been incorporated into such products<sup>2</sup>; and
  - b. Existing business documents sufficient to show:
    - i. all of the ingredients and steps used in the process(es) for making the fipronil;
    - ii. (a) the size and composition of the reactors used to make the fipronil (reactor specifications), and (b) the composition of any coating or lining of the reactors; and

---

<sup>1</sup> The parties shall meet and confer to discuss a proposed case schedule based on the tentative targeted Jury Trial date of July 22, 2013 set forth by the Court during the October 27, 2011 Status Conference, and shall, by December 2, 2011, submit a joint report that sets forth either an agreed-upon proposed case schedule or competing proposed case schedules.

iii. whether any corrosion inhibitor is used in the process(es) for making the fipronil.

3. Within thirty (30) days of their receipt of the above-identified Limited Manufacturing Process Discovery, Counterclaim-Plaintiffs will evaluate the Limited Manufacturing Process Discovery provided by Plaintiffs and inform Plaintiffs whether Counterclaim-Plaintiffs believe that they have a good-faith basis to continue to assert against Plaintiffs claims for infringement of U.S. Patent Nos. 6,620,943 and 6,881,848.
4. The Parties shall thereafter confer and, no later than January 25, 2012, the parties shall notify the Court whether the Parties wish to continue with this case.
5. If the Parties notify the Court that they wish to proceed with the case, then Defendants/Counterclaim-Plaintiffs shall, no later than February 8, 2012, serve on Plaintiffs a supplemental response, with respect to U.S. Patent Nos. 6,620,943 and 6,881,848, to Interrogatory No. 1 of Plaintiffs' April 8, 2011 First Set of Joint Interrogatories.
6. The Parties shall attempt to negotiate and file an agreed upon protective order governing the production of Limited Manufacturing Process Discovery. Notwithstanding the above paragraphs, Plaintiff is not obligated to provide any discovery under this Joint Stipulation until the entry of a protective order.

---

<sup>2</sup> Counterclaim-Plaintiffs shall be responsible for the costs of shipping samples on terms mutually agreed upon by the parties.

*/s/ John G. Day*

John G. Day (#24030)  
Tiffany Geyer Lydon (#3950)  
Andrew C. Mayo (#52070)  
ASHBY & GEDDES, P.A.  
500 Delaware Avenue, 8th Floor  
P.O. Box 1150  
Wilmington, Delaware 19899  
(302) 654-1888  
jday@ashby-geddes.com  
tlydon@ashby-geddes.com  
amayo@ashby-geddes.com

*Attorneys for Plaintiffs Velcera, Inc. and  
FidoPharm, Inc.*

OF COUNSEL:

Jonathan G. Graves  
Phillip E. Morton  
COOLEY LLP  
One Freedom Square  
Reston Town Center  
11951 Freedom Drive  
Reston, VA 20190  
(703) 456-8000  
jgraves@cooley.com  
pmorton@cooley.com

Tryn T. Stimart  
COOLEY LLP  
777 6<sup>th</sup> Street, NW  
Suite 1100  
Washington, DC 20001  
(202) 842-7800  
tstimart@cooley.com

*Attorneys for Plaintiffs Velcera, Inc. and  
FidoPharm, Inc.*

*/s/ Kelly E. Farnan*

Frederick L. Cottrell, III (#2555)  
Kelly E. Farnan (#4395)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
(302) 651-7509  
cottrell@rlf.com  
farnan@rlf.com

*Attorneys for Defendant and Counterclaim-  
Plaintiff Merial Limited and Counterclaim-  
Plaintiff BASF Agro B.V., Arnhem (NL),  
Wädenswil Branch*

OF COUNSEL:

Judy Jarecki-Black, Ph.D.  
MERIAL LIMITED  
3239 Satellite Blvd.  
Duluth, GA 30096-4640  
(678) 638-3805  
judy.jarecki@merial.com

J. Patrick Elsevier, Ph.D.  
JONES DAY  
12265 El Camino Real,  
Suite 200  
San Diego, CA 92130  
(858) 314-1200  
jpelsevier@jonesday.com

Frank G. Smith, III  
John W. Cox, Ph.D.  
Matthew W. Howell  
ALSTON & BIRD LLP  
1201 West Peachtree Street  
Atlanta, GA 30309-3424  
(404) 881-7000  
frank.smith@alston.com  
john.cox@alston.com  
matthew.howell@alston.com

Deepro R. Mukerjee  
ALSTON & BIRD LLP  
90 Park Avenue  
New York, NY 10016-1387  
(212) 210-9501  
deepro.mukerjee@alston.com

*Attorneys for Defendant and Counterclaim-  
Plaintiff Merial Limited*

Kenneth A. Gallo  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
2001 K Street, NW  
Washington, DC 20006-1047  
Tel.: (202) 223-7300  
Fax: (202) 223-7240  
kgallo@paulweiss.com

Catherine Nyarady  
Kripa Raman  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Tel.: (212) 373-3000  
Fax: (212) 373-3990  
cnyarady@paulweiss.com  
kraman@paulweiss.com

*Attorneys for Defendant and Counterclaim-  
Plaintiff BASF Agro B.V., Arnhem (NL),  
Wädenswil Branch*

Dated: November 11, 2011

SO ORDERED this \_\_\_\_\_ day of November, 2011.

---

CHIEF UNITED STATES DISTRICT JUDGE